

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ANTHONY SLOAN,

Plaintiff,

v.

Case No. C-1-01-592

CITY OF CINCINNATI, et al.,

Defendants.

ORDER

This matter is before the Court upon defendants' motion for leave to file a summary judgment motion (doc. 28). Defendants have attached a proposed summary judgment motion to their motion for leave to file. Defendants contend that the summary judgment motion was not filed prior to expiration of the dispositive motion deadline set by the Court because of continuing problems with obtaining the full state court transcripts, counsel's heavy litigation calendar, and inadvertence.

Plaintiff Anthony Sloan filed the complaint in this action on September 4, 2001, asserting claims for unlawful seizure and arrest and excessive force in violation of the Fourth Amendment, unlawful municipal policy of threatening witnesses to the allegedly unlawful seizure and arrest in violation of the Fourth and Fifth Amendments, and malicious prosecution (doc. 1). The original deadline for filing dispositive motions was February 9, 2003 (doc. 11). On May 9, 2003,

defendants moved to amend the Scheduling Order and extend the dispositive motion deadline to September 1, 2003, on the ground that defendants had been unable to obtain the transcript of one of plaintiff's state court criminal cases (doc. 20). The Court granted defendants' motion and issued an Amended Scheduling Order on May 15, 2003 (doc. 21). Subsequently, on August 29, 2003, defendants filed a motion to amend the Amended Scheduling Order on the ground that they had not received the state court transcript they were awaiting until August 11, 2003, and additional time was needed to review the voluminous transcript (doc. 24). On September 4, 2003, the Court granted defendants' motion and issued another Amended Scheduling Order establishing a motion cut-off date of November 1, 2003 (doc. 25). On November 4, 2003, defendants filed a motion for a ten-day extension of time in which to file a dispositive motion on the ground that they had encountered problems concerning the electronic scanning of the transcript of state court proceedings (doc. 26). The Court granted defendants the requested extension on November 5, 2003 (doc. 27). Defendants filed the motion for leave which is presently before the Court on March 5, 2003.

Defendants' motion for leave to file their summary judgment motion is not well-taken. Defendants requested and obtained three extensions totaling nine months to the dispositive motion deadline. Defendants allege that the motion for summary judgment was substantially completed before the last extended filing deadline had passed, but counsel learned at the last minute that the state court transcripts were incomplete. Nonetheless, defendants did not seek a further extension of time and took no action in the case for four months following expiration of the extended filing deadline. Defendants have not presented a valid justification for their failure to seek an additional extension of time for filing their summary judgment motion or for their delay

in filing a summary judgment motion. Plaintiff would be unduly prejudiced if defendants were permitted to file their summary judgment motion at this late date since the trial of this matter is set for next month, and accepting defendants' summary judgment motion for filing would delay the trial for several months. For these reasons, defendants' motion for leave to file their dispositive motion is **DENIED**.

IT IS SO ORDERED.

S/ Herman J. Weber

HERMAN J. WEBER
SENIOR JUDGE, UNITED STATES DISTRICT COURT

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